IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

CRL.A.No. 527 of 2000()

CC.890/1997 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ALATHUR

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APPELLANT:

A.NOOR MUHAMMED,
S/O.ATHAR RAWTHER,
KAYARAMKULAM,
THENKURISSI POST,
ALATHUR TALUK.

BY ADV. SRI.SAJAN VARGHEESE K.

RESPONDENTS:

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1. SUDARSANAN,
S/O.MUKUNDAN NAIR,
MADATHI VEEDU, PARAKULAM,
KUNISSERY, ALATHUR.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.N.K.KARNIS
PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.527/2000-C

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Dated this the 18th day of September, 2007

J U D G M E N T

The appellant is the complainant in the proceedings initiated under Section 138 of the Negotiable Instruments Act in which the accused was acquitted. It is the case of the appellant that towards the discharge of the liability, the accused issued the impugned cheque dated 24/10/1997 for Rs.1,00,000/- and when it was presented for encashment, the same was dishonoured for want of funds in the account of the accused. The lawyer notice sent was replied to with false contentions.

2. The evidence adduced in the matter consisted of the testimony of PW.1 and Exts.P1 to P5. Defence examined DW.1 and marked Ext.D1.

3. The court below acquitted the accused on the ground that the dates of borrowal and the issuance of the cheque mentioned in the sworn statement of the complainant varied from his version before the court.

4. PW.1, the complainant has testified as to the borrowal and alleged execution of the cheque and also as to the dishonour for want of funds in the account of the accused. He has also proved the documents in this regard. He has stated that on 24/09/1997 the amount was borrowed and on the same day the impugned cheque was issued. He has also stated that the version of the accused in the reply notice, that is, Ext.P5 is false. The version therein is that the cheque was issued towards security. It was suggested in the cross-examination that the accused has not borrowed any amount from the complainant and only a blank cheque was issued as a guarantor.

5. I find that the contention relied on by the court below that PW.1 has mentioned different dates when his sworn statement was taken is absolutely erroneous in the absence of anything put in the cross-examination with respect to the alleged different dates in the sworn statements.

6. Further more, the case mentioned in the reply notice is not exactly the same as suggested in the cross-examination. What has been put to PW.1 in the cross-examination is that when the accused stood as guarantor, and that the cheque was issued as security. On

the other hand, the version in Ext.P5 reply notice is that the accused had transactions with the complainant and that on one such occasion the cheque was issued when PW.1 stood as guarantor for the accused when the accused had transaction with another person and when PW.1 was a mediator in the above dealing.

7. The evidence of DW.1 the bank manager is only to the effect that in Ext.D1 the account opening form of the accused it was the complainant who introduced the accused. I find that the same has no relevance in the matter in dispute.

8. In the circumstances, I find that PW.1 has proved the execution of the cheque and that the statutory presumptions stands not rebutted. It has also been proved that the statutory formalities envisaged under Section 138 N.I.A for filing the complaint has also been fulfilled. Hence, the accused is guilty of the offence under Section 138 N.I.A. The finding of the court below to the contra is set aside. The accused/respondent is convicted for the offence under Section 138 N.I.A and sentenced to undergo imprisonment till the rising of the court and to remit compensation amount of rupees one lakh and in default to undergo simple imprisonment for three months.

The accused/respondent is granted six months time to remit the amount of compensation. The accused shall appear before the Judicial Magistrate of the First Class, Alathur, on 19/03/2008 to receive the sentence.

The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.527/2000-C

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J U D G M E N T

18th September, 2007